U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-D-I- CORP.

DATE: JAN. 19, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a real estate development business, seeks to temporarily employ the Beneficiary as its president under the L-1A nonimmigrant classification for intracompany transferees.[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that the Director erroneously determined that the record lacked a sufficient description of the Beneficiary's proposed job duties. The Petitioner further contends that the Beneficiary qualifies for L-1A classification "based on her subordinate employees' qualifications."

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.* The

[1] The Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period 2016, until , 2017. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). U.S. Citizenship and Immigration Services (USCIS) denied the Petitioner's request for an extension of the new office petition on 2017, and the Petitioner then filed this new petition.

petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS takes into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

In the denial decision, the Director determined that the record did not support the Petitioner's claim that the Beneficiary's duties are primarily managerial or executive in nature. The Director found that the Petitioner did not provide a sufficiently detailed description of the Beneficiary's day-to-day duties. The Director further found that the Petitioner did not establish that it had the organizational structure to support a managerial or executive position. Finally, the Director noted that the record did not show that the Beneficiary would manage subordinate professionals or managers, or that she would primarily manage an essential function of the business.

On appeal, the Petitioner maintains that the Beneficiary's duties are primarily managerial or executive and that "there is no fixed schedule . . . to describe the beneficiary's work on a daily basis as it is not routine office work." The Petitioner asserts that all of the Beneficiary's subordinates have at least a bachelor's degree and that the Beneficiary qualifies for L-1A classification based on the subordinate employees' qualifications.

When examining the managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of

the job duties, USCIS examines the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Duties

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

The Petitioner is a real estate development company established in 2014. Shortly thereafter, it company acquired a 15-acre parcel of undeveloped land in California, with the objective of developing the land into a residential area. At the time of filing, in 2017, the Petitioner noted that the City of "approved our project at GPA hearing on 2017." The Petitioner indicated that this approval can be considered "significant progress" after multiple years of meetings and hearings with the city's planning commission and city council, as well as working closely with architect and design teams to prepare studies and reports and submitting applications.[2]

The Petitioner's letter in support of the petition included a lengthy description of the Beneficiary's proposed duties as president. Briefly, the Petitioner stated she would allocate her time as follows:

- Setting up the company's strategic goals, objectives and policies and overseeing the implementation (10%);
- Recommending annual budget and managing company's resources within the budget guidelines per current laws and regulations (10%);
- Supervising and monitoring the daily operation of the company to assure profitability and growth (20%);
- Directing staff to set up and develop client network in the US, participating key clients' meetings and important social activities on behalf of the company (20%);
- Liaison with the parent company on a regular basis regarding company's future planning, business strategies and management (10%);

[2] Later, in response to a request for evidence (RFE), the Petitioner provided a letter dated 2017, from the City of Community Development Department. This letter advised the Petitioner that City Council authorized the formal processing of its General Plan Amendment application. Further, the city recommended that, prior to filing the General Plan Amendment application, the Petitioner first submit a Preliminary Review Procedure application for further examination of its proposal. Based on this evidence it is not clear that the Petitioner has received final approval for its proposed development project.

- Hiring, firing and promoting employees of the company (15%);
- Planning and controlling company's financial activities and overseeing cash flow and corporate tax matter(s) (15%).

The Petitioner re-submitted this position description in response to the Director's request that it provide further explanation to establish that the Beneficiary's actual duties would be primarily managerial or executive in nature.

Upon review, we agree with the Director's assessment that the job description is insufficient to establish that the Beneficiary would be employed in a managerial or executive. Although the broad responsibilities reflect the Beneficiary's senior position in the company as the president, the Petitioner did not provide details needed to provide insight into what she would be doing on a day-to-day basis as the president of a company with a single real estate development project that is still in the planning and permitting stage.

Many of the duties are overly broad and could describe any managerial or executive position within any company. For example, the Petitioner stated that the Beneficiary would be establishing goals, objectives and policies, supervising and monitoring daily operations, managing company resources, planning and controlling financial activities, and making personnel decisions, but provided little detail describing her expected daily tasks within the context of the Petitioner's business. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of their daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Although the Director specifically noted the lack of detail in the job description, the Petitioner does not offer additional explanation of the Beneficiary's proposed position on appeal. The Petitioner contends that the previously provided description "accurately described" the position, that the Beneficiary will be "busy overseeing the whole company's operations," will not have a fixed schedule, and will not be performing "routine office work." These statements do not provide additional insight into the actual type of work the Beneficiary will be doing or what tasks will engage her in overseeing the whole company's operations.

We do not doubt that the Beneficiary will have the authorities attributed to her by the broad job description; however, we do find it reasonable to question whether it is a complete and accurate representation of her actual proposed duties. For example, it is not evident how the Beneficiary would spend 15% of her time on hiring, firing, and promoting employees. The Petitioner's project has not been approved and the record does not reflect that the company is actively recruiting staff. In addition, the Petitioner only noted that the Beneficiary would attend final-round interviews with candidates and review performance evaluations every six months. It is unclear why this responsibility would require 15% of her time on a routine basis.

Similarly, it is unclear how the Beneficiary could spend 20% of her time directing the development of a "client network" in the United States based on the Petitioner's current stage of operational development. The Petitioner has an undeveloped parcel of land that has not yet received approval for development, no other documented projects, clients, or customers, and it has not shown a current need to develop a U.S. client network. At the same time, none of the Beneficiary's responsibilities appear to relate directly to the types of activities in which the Petitioner is actually engaged, which further leads us to question whether the Petitioner provided a complete and accurate representation of the proposed position.

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the actual duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the broad position description alone is insufficient to establish that her actual duties would be primarily managerial or executive in nature.

B. Staffing

The Petitioner established that it employs four employees in addition to the Beneficiary: an investment and marketing manager, a financial and administration manager, a project manager, and an engineering manager. All four employees are identified as the heads of separate departments on the Petitioner's organizational chart. The chart includes vacancies for: a customer service representative and sales staff in the investment and marketing department; an administrative assistant in the financial and administration department; and two engineers in the engineering department. Finally, the organizational chart shows that the project manager oversees [redacted] a contractor.

On appeal, the Petitioner claims that the Beneficiary qualifies for L-1A classification based on the professional qualifications of her subordinate employees. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. The Petitioner does not claim that the Beneficiary will be a function manager, so we will examine the duties performed by her subordinates to determine if she will be primarily supervising subordinate supervisory, professional, or managerial employees.

The Petitioner provided a summary of duties for each employee and evidence that the investment and marketing manager and financial and administration department manager have earned college degrees. The Petitioner indicated that both the engineering manager and the project manager have bachelor's degrees, but did not provide supporting evidence of their credentials.

The evidence must substantiate that the Beneficiary's duties and those of her subordinates correspond to their placement in an organization's structural hierarchy. Managerial job titles alone are not probative and will not establish that an organization is sufficiently complex to support a managerial or executive position. As of the date of filing, three of the subordinate managers had no subordinate employees to oversee or manage, as the Petitioner had not yet hired the lower-level sales, customer service, administrative, or engineering staff depicted on its organizational chart. Therefore, any supervisory duties attributed to the department managers are prospective in nature. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). While the Petitioner did establish that it uses the services of [redacted] the record does not contain evidence of the project manager's supervision of this architectural firm. The Petitioner has not shown that the Beneficiary's subordinates are managers or supervisors.

On appeal, the Petitioner claims that the Beneficiary's subordinates are professionals. In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Therefore, we must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

The Petitioner has established that its investment and marketing department manager has a bachelor's degree in electrical engineering, but it has not shown that an engineering degree is required for his position. The Petitioner indicates that this employee explores investment opportunities and is in charge of "real estate marketing and sales," attends social activities, visits clients, and supervises sales and customer service staff who have not yet been hired. Given that the Petitioner currently owns undeveloped land and appears to be several stages removed from being approved to proceed with its construction project, it is unclear what marketing and sales duties this employee is actually in charge of. The Petitioner has not shown that this individual is employed in a professional position.

The Petitioner's financial and administration department manager has a master's degree in economics. The Petitioner indicates that this individual oversees cash flow, budget control, and tax

matters and makes suggestions regarding the company's financial strategies. However, most of these duties overlap with the Beneficiary's own duties and the Petitioner does not indicate who is actually responsible for the Petitioner's routine, day-to-day financial activities, if not this employee. Many of the remaining duties attributed to this department manager are administrative, including setting up meetings, organizing activities, purchasing office supplies, and maintaining company records, duties which may eventually be assigned to an administrative assistant. The Petitioner's description of this employee's duties, viewed within the context of the business, is insufficient to establish that the financial and administration manager is a professional position.

The Petitioner did not provide evidence that its two remaining employees have at least a bachelor's degree, nor has it provided sufficiently detailed descriptions for the project manager or engineering manager to show that these positions require a degree. Therefore, the Petitioner has not shown that the Beneficiary would qualify as a personnel manager based on her supervision of subordinate professionals.

The record does not establish, in the alternative, that the Beneficiary will be employed in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because he or she "directs" the enterprise as the owner or sole managerial employee. Here, although the Petitioner indicates that the Beneficiary will be responsible for establishing the company's goals and policies, she is not currently directing managerial employees and, for the reasons discussed above, it is unclear what she is doing on a day-to-day basis.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Given the Petitioner's current stage of development, the job descriptions provided for the Beneficiary and her subordinates appear to be largely prospective, rather than reflective of their actual duties at the time of filing. Without a meaningful description of the actual duties performed by the Beneficiary and her subordinates within the context of the Petitioner's operations and current level of business activity, we cannot determine that the Petitioner had a reasonable need for the Beneficiary to perform primarily executive duties.

The Petitioner made a sizeable real estate investment three years prior to the filing of the petition and emphasizes that this type of development project requires a lengthy period of time to come to fruition. While it may be normal for a project of this scale to remain in the pre-construction phase for years, the Petitioner must still show that it was able to support a managerial or executive positon

as of the date of filing the petition. The reasonable needs of the Petitioner will not supersede the requirement that the Beneficiary must be "primarily" employed in a managerial or executive capacity, spending the majority of her time on clearly described qualifying duties. *See* sections 101(a)(44)(A) and (B) of the Act. For the reasons discussed, the Petitioner has not met this requirement.

III. CONCLUSION

The appeal must be dismissed as the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of U-D-I- Corp.*, ID# 825871 (AAO Jan. 19, 2018)